

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

Modernizing the E-rate Program for
Schools and Libraries

WC Docket No. 13-184
FCC 13-100

**COMMENTS OF
THE MASSACHUSETTS DEPARTMENT OF
TELECOMMUNICATIONS AND CABLE**

Commonwealth of Massachusetts
Department of Telecommunications and Cable

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The Massachusetts Department of Telecommunications and Cable (MDTC),¹ in consultation with the Commissioner of the Massachusetts Department of Elementary and Secondary Education (MESE)² and the Massachusetts Broadband Institute (“MBI”),³ respectfully submits these comments in response to the Notice of Proposed Rulemaking (NPRM)

¹ The MDTC regulates telecommunications and cable services within the Commonwealth of Massachusetts and represents the Commonwealth before the FCC. MASS. GEN. LAWS ch. 25C, § 1; GEN. LAWS ch. 166A, § 16. Silence on any matter not addressed in these comments does not connote agreement or opposition by the MDTC.

² The MESE works “[t]o strengthen the Commonwealth’s public education system so that every student is prepared to succeed in postsecondary education, compete in the global economy, and understand the rights and responsibilities of American citizens, and in so doing, to close all proficiency gaps.” *See* MESE Website, *available at*: <http://www.doe.mass.edu/commissioner/> (last viewed Sept. 10, 2013). The MESE is guided by four goals: (1) strengthen curriculum, instruction, and assessment; (2) improve educator effectiveness; (3) turn around the lowest performing districts and schools; and (4) use data and technology to support student performance. *Id.*

³ The MBI at the Massachusetts Technology Collaborative is the state broadband program created by Governor Deval Patrick and the Massachusetts state legislature in 2008 to bring affordable, high-speed broadband Internet access to the remaining unserved/underserved residents and businesses in the Commonwealth. The MBI also implements and oversees broadband availability mapping, broadband adoption, and network infrastructure deployment programs within the Commonwealth. The MBI is currently deploying its 1,200 mile *MassBroadband 123* fiber-optic network, funded under the Broadband Technology Opportunities Program. *MassBroadband 123* will bring high-speed Internet access to underserved areas of western and central Massachusetts, connecting over 1200 important community facilities, including community colleges, high schools, libraries, public safety facilities and other municipal buildings.

released by the Federal Communications Commission (FCC) on July 23, 2013.⁴ Through the NPRM, the FCC “initiate[s] a thorough review” and seeks comment on ways to “more comprehensively modernize the E-rate program, including improving the [program’s] efficiency and administration[.]”⁵ The FCC proposes three, primary goals to guide its reforms: (1) ensure that schools and libraries have affordable access to 21st century broadband that supports digital learning; (2) maximize the cost-effectiveness of E-rate funds; and (3) streamline the administration of the program.⁶

I. BACKGROUND AND SUMMARY

The MDTC commends the FCC’s goals as stated in the NPRM and believes that attaining efficiencies within the E-rate program should be the agency’s guiding focus. These efficiencies should encompass easing the administrative burden on schools and libraries, implementing cost-saving measures within the program, and better coordinating E-rate with other federal programs. The FCC should also incorporate a measured transition and ensure that updated funding requirements do not conflict with existing federal or state educational directives.

If the FCC does not implement reforms, the E-rate program will soon no longer reflect the intent envisioned by Congress. In particular, Congress directed that universal service funding be used to ensure that schools and libraries have affordable access to advanced telecommunications and information services.⁷ Indeed, the FCC through E-rate historically has

⁴ *In the Matter of Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Notice of Proposed Rulemaking, FCC 13-100 (rel. Jul. 23, 2013) (NPRM).

⁵ *Id.* at ¶¶ 1, 11.

⁶ *Id.* at ¶¶ 12-55.

⁷ *Id.* at ¶¶ 14, 18; U.S.C. §§ 254(b)(1), (b)(6), (h)(1)(B), (h)(2). For purposes of the FCC’s annual *Broadband Progress Report*, Congress defines “advanced telecommunications capability” as “high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology.” 47 U.S.C. § 1302(d)(1). Through this report, Congress directs the FCC to annually “determine whether advanced telecommunications capability is being deployed to all

enabled schools and libraries to subsidize Internet connectivity.⁸ However, a growing level of funding has been directed toward more traditional telecommunications services,⁹ and, barring immediate reform, the program will no longer be able to fund so-called “Priority Two” requests in the near future.¹⁰ As the FCC has acknowledged, notwithstanding the existence of the E-rate program, it “appear[s] that many schools and classrooms are underserved by broadband today.”¹¹

Massachusetts, a long-time leader in broadband and education, has a vested interest in the outcome of the FCC’s E-rate reforms. In addition, as a Congressman, Senator Markey was a key player in helping to launch the program, benefitting schoolchildren and the public nationwide for over a decade.¹² The MDTC supports the FCC’s efforts to reform the E-rate program, mindful

Americans in a reasonable and timely fashion [], in particular, elementary and secondary schools and classrooms.” 47 U.S.C. § 1302(b).

⁸ See NPRM at ¶ 2; USAC E-rate Disbursement Tool (showing that funding commitments for Priority One “Internet access” has consistently increased since the program’s inception), *available at*: <http://www.usac.org/sl/tools/commitments-search/Default.aspx> (last viewed Aug. 21, 2013).

⁹ See USAC E-rate Disbursement Tool (indicating that funding commitments for Priority One “Telecomm. Services” grew from just over \$679 million in 1998 to over \$1.4 billion in 2012); 47 C.F.R. § 54.502(1) (“For purposes of [E-rate funding], supported telecommunications services provided by telecommunications carriers include all commercially available telecommunications services”). USAC specifies that:

Commonly available telecommunications services eligible for discounts [under E-rate] include local and long distance wired telephone service; interconnected VoIP; cellular phone service, including text messaging and voicemail, and Centrex service. Digital Subscriber Line (DSL), Primary Rate Interface (PRI), T-1, T-3, and satellite services are also eligible. Telecommunications services must be provided by a telecommunications carrier, that is, a company that offers telecommunications services on a common carriage basis.

USAC Schools and Libraries Acronyms and Terms, *available at*: http://www.usac.org/_res/documents/sl/pdf/handouts/SL-Glossary-of-Terms.pdf (last viewed Aug. 21, 2013).

¹⁰ NPRM at ¶¶ 62-63. Priority Two support is directed to internal connections and maintenance of those connections. See *id.* at ¶ 61; 47 C.F.R. § 54.507(g)(ii);.

¹¹ See *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, Amended by the Broadband Data Improvement Act*, GN Docket Nos. 11-121 Report, FCC 12-90 (rel. Aug. 21, 2012), at ¶ 134. The FCC utilized data from an E-rate Survey to make this determination. *Id.* at ¶ 131.

¹² See, e.g., Hillicon Valley Blog, “Markey champions E-rate in first Senate hearing” (Jul. 17, 2013) (discussing Senator Markey’s statement during a recent Commerce Committee meeting); NPRM, Commissioner Rosenworcel Statement (lauding E-rate and the “vision and leadership” of several politicians, including Sen. Markey).

that in adopting such reforms, the FCC should ensure the important benefits Massachusetts has already realized from the program are not diminished.

II. THE FCC SHOULD FOCUS ON ATTAINING EFFICIENCIES WITHIN THE E-RATE PROGRAM AND IMPLEMENTING COST-SAVING MEASURES.

The FCC and the Universal Service Administrative Company (USAC) present data demonstrating growing inefficiencies and disparities within the E-rate program. A recent report by Funds for Learning demonstrates that “school districts with high discount rates spend, on average, far more on E-rate supported services than schools that have to pay a higher percentage of the costs of the supported services they purchase.”¹³ The FCC also observes that “many schools and libraries do not know from one year to the next whether they will be eligible for priority two funds” and that “some of the largest urban school districts receiv[e] as much as \$190 per-student in any given funding year for priority two services, while smaller school districts [...] rarely receive such support.”¹⁴ Separately, the complexity of the administration, application, and appeals process compels many applicants “to hire consultants to handle these tasks[,]” raising applicants’ costs, and may deter many others from applying at all.¹⁵

These factors, coupled with the demand and limited funding pool for E-rate,¹⁶ should compel the FCC to focus its reforms on attaining efficiencies within the program and implementing cost-saving measures. With limited funding available to schools and libraries throughout the nation, overall, the FCC should doubly aim to garner the greatest value for every

¹³ NPRM at ¶ 120, *citing* Funds for Learning, FY 2013 E-rate Funding Requests, Telecommunications and Internet Access by Schools and School Districts, CC Docket No. 02-6 (filed Jul. 3, 2013), at 8, 9. The FCC also notes that it has “anecdotal evidence that E-rate applicants may[]be unaware of state master contracts or cooperative purchasing organizations [...] that could be beneficial to them.” NPRM at ¶ 204.

¹⁴ *Id.* at ¶ 62. According to the FCC, “[n]otably, four school districts in the nation’s largest cities requested at least \$240 per-student, and more than a dozen other applicants sought over \$1,000 per student in total support in funding year 2012.” *Id.* at ¶ 135.

¹⁵ *Id.* at ¶ 224. The FCC notes that it has a backlog of appeals that have been “pending for years.” *Id.* at ¶ 266.

¹⁶ *Id.* at ¶¶ 64, 254 (indicating that requests for support far exceed the funds available).

dollar spent involving E-rate. Reform measures should include: (1) easing the administrative burden on schools and libraries; (2) adopting measures for increased transparency and a “reasonably comparable” standard; and (3) better coordinating E-rate with other federal programs. Fortunately, each of these measures is captured within the proposals set forth by the FCC in the NPRM.¹⁷

A. The FCC Should Ease the Administrative Burden on Schools and Libraries.

The FCC’s goal to streamline the administrative burden on schools and libraries is admirable, and the MDTC urges the FCC to make this its primary focus. Under the current system, not only do applicants complete at least six FCC forms over a funding year, they must also face to the potential of having to respond to numerous additional requests for information and documentation requests from USAC.¹⁸ The FCC indicates that delays in USAC’s application review process forces applicants to make purchasing decisions while their applications are pending and before they know whether they will receive funding.¹⁹ Further, applicants may erroneously classify their requests by virtue of “be[ing] unfamiliar with the regulatory framework for telecommunications services and Internet access[.]”²⁰

The MDTC endorses eliminating the “priority” funding and eligible services distinctions.²¹ The MDTC agrees that adoption of a “whole-network” approach would provide

¹⁷ See, e.g., *Id.* at ¶¶ 191-201 (increasing transparency), 224-269 (streamlining the administration of the program), 282-293 (addressing changes to the National School Lunch Program).

¹⁸ *Id.* at ¶ 224.

¹⁹ *Id.* at ¶ 225.

²⁰ *Id.* at ¶ 249.

²¹ *Id.* at ¶¶ 146-148. The FCC summarizes the current funding distinctions:

The Commission’s current rules provide that requests for all telecommunications, telecommunications services and Internet connections (priority one services) receive first priority for funding. The remaining funds are allocated to requests for support for internal connections and basic maintenance of internal connections (priority two services), beginning with the most economically disadvantaged schools and libraries, as determined by the schools and libraries

greater flexibility to schools and libraries in their selection of services.²² In addition, use of a single, “consolidated menu of services” through the Eligible Services List, rather than the “priority” levels of service associated with regulatory classifications understood by a select few, better reflects and adapts to market realities as they relate to services provisioned to consumers, generally. Adoption of this approach would not only ease the burden borne by schools and libraries; it would also likely help to alleviate USAC’s administrative burden in its review process and provide greater certainty for an applicant’s funding prospects.

B. The FCC Should Implement Cost-Saving Measures Guided by Greater Pricing Transparency and Reasonable Comparability of Pricing and Services.

The FCC presents data that indicates inequitable pricing²³ and funding disparities between similarly-situated funding recipients. Clearly, services provided to many applicants and funded by E-rate do not reflect the reality of existing market conditions. For example, the FCC acknowledges that it “expect[s] that a small rural school may have to pay more per-student for Internet access than a large urban school” but points to a recent report that finds that “some of the highest per-student costs are in urban areas, where competition should drive down prices.”²⁴ Similarly-situated schools and libraries should receive reasonably comparable rates and services just as that requirement exists relative to the rural and urban comparability distinction.²⁵ As a

discount matrix. Funding for all priority one services is committed first and all remaining funding is committed to priority two requests, beginning with schools and libraries eligible for a 90 percent discount. The remaining funds for priority two services are allocated to eligible applicants at each descending single discount percentage, *e.g.*, 89 percent, 88 percent, and so on until the cap has been reached.

Id. at ¶ 61. *See also* 47 C.F.R. § 54.502 (E-rate “Eligible services”); 47 C.F.R. § 54.507(g) (E-rate “Rules of priority”).

²² NPRM at ¶ 146.

²³ *Supra* at 3-4.

²⁴ NPRM at ¶ 136.

²⁵ In particular, core principles enumerated by Congress requires the FCC to formulate its universal service policies to ensure that “[q]uality services [...] be available at just, reasonable, and affordable rates” and that services to

result, the FCC should revisit carrier data reporting requirements.²⁶ The FCC should also consider ways in which applicants have access to a list of services and pricing in their areas in order to assist in purchase decision-making.²⁷ This change may require the FCC to update its existing lowest corresponding price rule and assist with the FCC's efforts to target waste, fraud, and abuse.²⁸ Separately, the FCC should also consider ways to incentivize consortia, district, and regional applications.²⁹ Such a practice could provide applicants with greater bargaining power and likely drive down costs as well as, potentially, benefit greater numbers of students and the public.

C. FCC Should Better Coordinate E-Rate With Other Federal Programs.

To further assist with efficiencies and implementation of cost-saving measures, the FCC should also consider ways in which it can better coordinate E-rate with other federal programs.³⁰ This coordination should include aligning E-rate with other USF mechanisms, as well as with United States Department of Education (DOE) or other federal initiatives. For instance, the FCC

consumers in rural and high-cost areas are “reasonably comparable” to those in urban areas. 47 U.S.C. §§ 254(b)(1) and (b)(3). This disparity between similarly-situated E-rate funded schools raises the question as to how the FCC ensures reasonable comparability of E-rate funding pursuant to Section 254(b)(3).

²⁶ NPRM at ¶¶ 29-39 (seeking comment on broadband data measurements for schools and libraries); ¶¶ 52-55 (seeking comment on data collection). *See also* MDTC Comments, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; GN Docket No. 09-51; CC Docket Nos. 01-92, 96-45; WT Docket No. 10-208 (filed Jan. 18, 2012), at 22 (relative to the review of the “reasonable comparability” of rates and services under the Connect America Fund, urging the FCC to update the Form 477 reporting obligations “applicable to *all* voice and broadband providers [...] [to] address, at a minimum, deployment, pricing and subscription data”).

²⁷ *See, e.g.*, Telecommunications Access Policy Division on behalf of several school districts, Notice of Ex Parte, WC Docket No. 13-184 (filed Jul. 30, 2013), at 2 (encouraging the FCC “to provide school districts with more information on competitive prices” and suggesting that the FCC “publish a cost map so that districts can know if they are getting good deals on technology and telecommunications services”).

²⁸ 47 C.F.R. § 54.511(b); NPRM at fn.62 (discussing “lowest corresponding price” rule); ¶ 39 (seeking comment on measuring compliance with the “lowest corresponding price” rule).

²⁹ NPRM at ¶ 124 (seeking comment on whether to encourage consortium pricing by providing a higher discount rate to consortia applications); ¶¶ 126-132 (seeking comment on whether to mandate applications and/or base support and discounts at the school district level); ¶¶ 179-185 (seeking comment on ways to increase consortium purchasing); ¶¶ 186-190 (seeking comment on ways to encourage bulk buying).

³⁰ *Id.* at ¶¶ 167-176 (seeking comment on ways to coordinate E-rate with other universal service programs).

should build upon the Rural Utilities Service’s Broadband Initiatives Program and the National Telecommunications and Information Administration’s Broadband Technology Opportunities Program (BTOP), as it did for the repurposed USF high-cost mechanism, now the Connect America Fund (CAF). The FCC should also build upon its own CAF initiatives as well.³¹ Consideration should include whether to use the same “rural” definition for all the USF arms;³² to prohibit additional rural discounts to schools and libraries that directly benefit from CAF connectivity;³³ and to prioritize funding for special construction from middle-mile facilities with input from appropriate state entities.³⁴ The FCC should also build upon information garnered from prior USF pilot programs and seek ways to promote digital literacy and/or fund devices for educational use by low-income students utilizing Lifeline funds.³⁵ Finally, the FCC should seek

³¹ *In the Matter of Connect America Fund et al.*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; GN Docket No. 09-51; CC Docket Nos. 01-92, 96-45; WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011), at ¶ 5. One of the FCC’s core goals for the repurposed CAF includes ensuring universal availability of modern networks capable of providing voice and broadband service to community anchor institutions. *Id.* at ¶ 17, fn. 47, and fn. 163; NPRM at ¶ 176. The MDTC also urges the FCC to seek input from the Federal-State Joint Board on Universal Service (Joint Board), as originally envisioned by Congress. *See* 47 U.S.C. §§ 254(a)(2), (b), and (c); NPRM at ¶ 176 (seeking comment on the appropriate role for the Joint Board in reforming E-rate).

³² NPRM at ¶¶ 276-281 (proposing to update the “rural” definition under E-rate).

³³ *Id.* at ¶ 168 (seeking comment on how to minimize any overlap in funding for broadband).

³⁴ *Id.* at ¶¶ 75-76 (seeking comment on whether to prioritize special construction from middle-mile networks to schools and libraries and whether a role exists for states “to play in determining priority for such funds”). Funding should be tied to last-mile build-out to schools and libraries from such networks as the *MassBroadband 123* network, funded largely by the BTOP program and coordinated by the MBI. *See* MBI “What We Do” page, available at: <http://broadband.masstech.org/what-we-do> (last viewed Aug. 23, 2013); Axia *MassBroadband 123* “What is Axia *MassBroadband 123*” page, available at: <http://www.massbroadband123.com/WhatIsAxiaMassBroadband123.aspx> (last viewed Aug. 23, 2013).

³⁵ NPRM at ¶ 10 (pointing to the E-rate Learning-On-The-Go pilot investigating “the merits and challenges of wireless off-premises connectivity services for mobile learning devices”); ¶¶ 220-223 (seeking comment on additional pilot programs); ¶¶ 270-275 (seeking comment on applicability of the Children’s Internet Protection Act to devices used under the program). *See also In the Matter of Lifeline and Link Up Reform and Modernization et al.*, WC Docket Nos. 11-42, 03-103, and 12-23; CC Docket No. 96-4, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11, at ¶¶ 323-354 (adopting a Lifeline pilot to promote broadband adoption by low-income consumers).

input from and coordinate with the DOE on other existing federal funding opportunities involving students' digital literacy and schools' use of broadband-related services.³⁶

III. E-RATE REFORM SHOULD INCORPORATE A MEASURED TRANSITION.

Any reform to the E-rate program needs to include a measured transition of at least one to two years. The transition length should be tied to when the FCC issues a final Order and receives any applicable Office of Management and Budget approvals relative to the start of the following funding year. Such an approach would help to minimize potential flash-cuts and impacts on schools and libraries in a given funding year.³⁷ It would also provide applicants time to acquaint themselves with changes in the program and, if necessary, seek alternate funding sources.³⁸ Further, such an approach would help to satisfy the requirement that any universal service support “be specific, predictable and sufficient[.]”³⁹

IV. FUNDING REQUIREMENTS SHOULD NOT CONFLICT WITH OTHER FEDERAL OR STATE EDUCATIONAL DIRECTIVES.

The FCC inquires as to whether it should adopt educational-outcome measurements, observing that critics claim that “classroom performance is affected by many factors” and, subsequently, “no reliable conclusions” can be drawn.⁴⁰ The FCC also notes that educational outcomes “are outside the agency’s core competence.”⁴¹ The MDTC urges the FCC to avoid

³⁶ See, e.g., State Educational Technology Directors Association Reply Comments, WC Docket Nos. 11-42, 03-109, and 12-23; CC Docket No. 96-45 (filed May 1, 2012), at 2 (endorsing the now defunded State Educational Technology Grants Program under the *No Child Left Behind Act* as the appropriate mechanism for digital literacy training for low-income children).

³⁷ NPRM at ¶ 91 (acknowledging “that flash-cuts to support in a funding year could be financially difficult for schools and libraries”).

³⁸ The FCC inquires several times as to the possible impacts of some of its reform proposals, as well as the impact from some of its existing program requirements. See, e.g. *id.* at ¶¶ 89, 106, 116, 124, 130, 152, 154-156, 164-165, 184, 281, 286, 292-293, 323.

³⁹ 47 U.S.C. § 254(b)(5).

⁴⁰ NPRM at ¶ 40.

⁴¹ *Id.*

imposing its own federal educational directives without additional data. In particular, the FCC needs to ensure that any new funding requirements do not conflict with other federal or state educational directives. To the extent that the FCC deems adoption of educational-outcome measurements to be necessary, then it should consult closely with the DOE and state and local educational authorities.

V. CONCLUSION

The MDTC supports E-rate reform and applauds the FCC's efforts. In sum, although central to many of its proposals, attaining efficiencies within E-rate should be the FCC's guiding focus. These efficiencies should encompass easing the administrative burden on schools and libraries, implementing cost-saving measures within the program, and better coordinating E-rate with other federal programs. The FCC should also incorporate a measured transition and ensure that updated funding requirements do not conflict with existing federal or state educational directives.

Respectfully submitted,

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